

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

In the Matter of

AL MARINO, INC.

Employer

and

Case 9-RC-17209

PLUMBERS AND PIPEFITTERS, LOCAL UNION 625,  
AFFILIATED WITH THE UNITED ASSOCIATION  
OF JOURNEYMEN AND APPRENTICES OF THE  
PLUMBING AND PIPEFITTING INDUSTRY OF THE  
UNITED STATES AND CANADA, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The International Brotherhood of Electrical Workers, Local 466, herein referred to as the Intervenor, intervened in the instant proceeding after presenting the hearing officer with a sufficient showing of interest. The Intervenor disclaimed any interest in inclusion on the ballot if an election were directed in the unit sought by the Petitioner.

6. The Employer, a corporation, is engaged in plumbing, HVAC,<sup>1/</sup> electrical, and general contracting in the construction industry at various jobsites in and outside the State of West Virginia from out of its office in Charleston, West Virginia. The Employer's business includes commercial renovation, repair, and new construction, and residential renovation and repair. The Employer utilizes a core group of employees, currently numbering about 26, whom it transfers from jobsite to jobsite as dictated by the available work. Other employees are hired on a project only basis when it has insufficient "core" employees to perform the amount of work required. There is no history of collective bargaining affecting any of the approximately 15 employees in the craft unit found appropriate.

The Petitioner seeks to represent a "craft unit" comprising all of the Employer's plumbers, plumber helpers, heating, ventilation, and air conditioning servicemen. In this regard, the Petitioner would exclude from the unit the Employer's construction employees who primarily perform electrical work. Additionally, the Petitioner would exclude auto mechanic David Bruner from the unit, apparently on the basis that he is primarily a mechanic and performs plumbing and pipefitting craft duties only sporadically. The Petitioner declined to take an alternative unit position. Contrary to the Petitioner, the Employer contends that the only appropriate unit for collective bargaining is an overall or "wall-to-wall" unit of its construction employees. In this connection, the Employer maintains that the unit sought by the Petitioner is not appropriate for purposes of collective bargaining because it seeks to include some electricians in the proposed unit while excluding others, thus blurring any "craft" lines that may exist. The Employer also asserts that the community of interest shared by all its construction employees compels the conclusion that only a "wall-to-wall" unit of such employees is appropriate for collective bargaining.

Jay Marino is the owner and president of the Employer. His father Al Marino is the Employer's vice-president. They are the only stipulated supervisors. The Employer's remaining managerial and office staff includes Lucea Marino, treasurer; Rhonda Marino, human resources manager; Lucy Jividen, executive secretary and accounts receivable; Priscilla Boggs, dispatcher; a bookkeeper; and a billing clerk. The parties stipulated that none of these individuals would appropriately be included in any unit found appropriate.

The employees in the unit sought by the Petitioner may perform a variety of tasks for the Employer but are principally engaged in plumbing, sheet metal, and HVAC work. In this connection, I note that there is some dispute in the record as to whether the sheet metal and HVAC work performed by the Employer's employees is traditionally considered as the type of craft work engaged in by plumbers or whether it is more appropriately considered sheet metal work. Record testimony and documentation submitted by Petitioner indicate that the

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<sup>1/</sup> "HVAC" stands for heating, ventilation, and air conditioning.

refrigeration aspect of HVAC work arguably falls within the purview of Petitioner's traditional craft jurisdiction. However, it appears that sheet metal work, or duct work, required for HVAC tasks is arguably traditional sheet metal work and is not considered traditional craft work of the Petitioner. Petitioner's traditional craft work does apparently contemplate some incidental sheet metal work. See, *Schaus Roofing*, 323 NLRB 781, 783 (1997).

The new construction plumbing work engaged in by the Employer's employees typically begins with the installation of underground piping prior to concrete floors being poured. Once the structure is framed, plumbers then install waste, vent, and water pipes in and through the walls. They then install roof drains, gas piping, and provide hook up where required by the contract. Water piping is typically "stubbed" a short distance outside the structure for later hook up by another contractor. The pipe is mostly PVC, a type of plastic pipe that is glued together. Occasionally, some iron piping is installed pursuant to specification. The plumbers also install copper lines in the walls of structures leading to fixtures. The fixtures are installed following the installation of sheet rock by other tradesmen.

According to the Employer, the City of Charleston requires that plumbing work be performed under the supervision of a master plumber.<sup>2/</sup> Scotty Birchfield and employee Eddie Gibson hold such licenses. Jay Marino and Al Marino also hold master plumber's licenses. The State of West Virginia apparently does not require that a plumber be licensed. The Employer's summary lists Birchfield, Gibson, and Eric Dayhaw only as plumbers.<sup>3/</sup> Gibson is a long-term employee like Birchfield, whereas Dayhaw has been employed by the Employer for about the past 6 months. In addition, the Employer employs several other employees who performed plumbing and HVAC duties whom the Petitioner seeks to include in the unit.

The Employer also employs several employees primarily or exclusively as servicemen, also referred to as service technicians. In this capacity they typically perform 1- or 2-day repair or renovation jobs on small residential and commercial jobs. These are primarily one-person jobs and they do plumbing and other work necessary to make repairs. The Employer's principal servicemen are Scott Butcher, David Horn, Doug Kimble, and Jeff Payne. The Petitioner would include these servicemen in the unit.

The Employer also employs a number of individuals who perform substantial electrical work. The State of West Virginia requires that all electricians be licensed. The licensing progression for an electrician is from helper to journeyman to master. Each level apparently requires that a test be passed and that the applicant have a certain number of years of training and/or on-the-job experience, with greater training and/or experience required to apply for each successive license. According to Jay Marino, the Employer has three or four electricians who have also gained at least some proficiency in the performance of plumbing work through on-the-

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<sup>2/</sup> The Employer's summary is apparently based in part on the recollection of Jay Marino and was admitted only as a guide for discussion of the Employer's workforce.

<sup>3/</sup> A journeyman plumber's license is obtained by passing a test. A journeyman has 0 to 4 years' experience in the trade. A master plumber's license is obtained by passing another test with the additional requirement of 4 to 8 years in the trade. It appears that some type of training may be substituted for on-the-job experience.

job training. These electricians were not specifically identified on the record. Additionally, the record reflects that Norman Skaggs, who has 17 years of experience as an electrician and holds a journeyman electrician's license, has functioned as a plumber's helper on a number of occasions. In this capacity Skaggs assists an experienced plumber in the performance of various plumbing tasks. Journeyman electrician Steve Sigler may have also performed some plumber's helper work, although to a lesser extent than Skaggs. In this regard, the record reflects that Skaggs has worked as a plumber's helper for about 3 weeks of his approximately 6 months of employment with the Employer. Skaggs presumably spent the remainder of his work time performing tasks of an electrical nature. The Petitioner would exclude the electricians from the unit. The Intervenor also maintains that the electricians should not be included in the unit sought by the Petitioner.

David Bruner has been employed by the Employer for about a year as an auto mechanic. In addition to servicing the Employer's vehicles and equipment, he acts as a helper on all types of jobs. According to the Employer, he may assist in performing carpentry, plumbing, and electrical work. The only specific example of such assistance contained in the record is an instance in which he operated a backhoe to facilitate the digging of a ditch for the placement of piping.

Wage rates for the Employer's construction employees range from \$6.50 an hour for a laborer/helper to \$17 an hour for the Employer's two principal field leads, Birchfield and Kyle. The next two highest paid employees receive \$15 an hour. One employee earns \$14.50 per hour and two others receive \$14 an hour. Several junior and less skilled employees are paid in the \$7 to \$9 per hour wage range. The wages of the employees sought by Petitioner range from \$6.50 to \$17 an hour and the wages of the employees whom the Intervenor has expressed an interest in representing earn between \$8 and \$15 an hour. The same fringe benefits are available to all of the Employer's employees. However, some unspecified benefits are apparently only available to employees who have been employed by the Employer for a substantial period of time. The Employer does not have an employee handbook or any written policies describing benefits or other working conditions. The Employer has no formalized training or apprenticeship program. Rather, any training occurs on the job with more experienced employees teaching job skills to less experienced employees.

Employees who work primarily in a particular craft often work on different jobsites from employees in other crafts. However, in the case of new construction, the Employer typically will submit a bid to perform the electrical, plumbing, and HVAC work on a project. In some instances it is the successful bidder on two or three of the different types of "craft" work. On these occasions the Employer's employees who primarily perform electrical craft work may be employed on the same project and at the same time with its employees who primarily perform plumbing or HVAC tasks. The record further discloses that on some occasions the Employer's electrical "craft" employees work side-by-side with its plumbing and HVAC craft employees. There are, of course, other projects where the Employer is the successful bidder for only one type of "craft" work. It appears that in these instances employees who primarily perform the type of "craft" work successfully bid upon do not for the most part interact on a daily basis with the Employer's employees in the other trades. When plumbers, electricians and HVAC employees are on the same jobsite they generally work the same hours and take their breaks

together at the same times. The record does not disclose how often employees of the different "crafts" work on the same project, although it appears to be a minority of the time.

The Employer supplies at least 10 of its construction employees with pick-up trucks or vans. With the exception of Kyle, it appears that most of the employees who are supplied with vehicles are primarily plumbers or servicemen. The vans driven by Servicemen Kimble, Payne, and Butcher are the only vehicles equipped with an array of parts for use in performing service work.

The record reflects that employees work independently for the most part in the performance of service work and on smaller jobs. On larger jobs, one of several senior employees such as Kyle or Birchfield will act as the lead. Jay Marino is immediately responsible for the supervision of all of the construction employees. He is also immediately responsible for the Employer's labor relations and makes all decisions relating to hiring and firing, layoffs, wages, and fringe benefits.

### **ANALYSIS AND CONCLUSIONS:**

The Board has held that in the construction industry, as in all other settings, it determines whether the requested unit is appropriate based on the community of interest among the employees. *Johnson Controls, Inc.*, 322 NLRB 669 (1996), citing *Dezcon, Inc.*, 295 NLRB 109 (1989). In *Johnson Controls*, the Board also noted that, "[A]n appropriate unit in the construction industry need not be limited to a craft or departmental unit so long as the employees sought are 'a clearly identifiable and functionally distinct group with common interests which are distinguishable from those of other employees'." *Johnson Controls*, supra at 672, citing *Del-Mont Construction Co.*, 150 NLRB 85, 87 (1965). Where an initial establishment of a craft or departmental group is sought, as opposed to severance from existing units that are more comprehensive, the Board applies the following general rule or test which it described in *Burns & Roe*, 313 NLRB 1307, 1308 (1994):

In determining whether a petitioned-for group of employees constitutes a separate craft unit, the Board looks at whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits, and cross-training.

I have considered the above factors in reaching my determination with respect to the unit found appropriate for purposes of collective bargaining in this case.

Initially, I note that the grouping of employees that the Petitioner seeks to represent does not appear to constitute a pure craft unit. In this connection, I note that sheet metal work has

been treated by the Board as a distinct craft for purposes of determining unit composition. See, *Schaus Roofing*, supra at 783. The record reflects that a number of the employees sought by the Petitioner perform sheet metal work or duct work in connection with HVAC tasks. Additionally, it is clear that at least some of the employees sought by the Petitioner, principally most of the servicemen, perform less complex electrical tasks such as installing light fixtures, switches, and receptacles, in addition to their plumbing and HVAC duties. Accordingly, I conclude that the unit sought by the Petitioner does not constitute a traditional plumbers and pipefitters craft unit. This conclusion, however, does not end my inquiry. As noted above, all that is required to constitute an appropriate unit in the construction industry is that the employees in the group sought be clearly identifiable and functionally distinct with common interests that are distinguishable from other employees. *Johnson Controls*, supra, citing *Del-Mont Construction Co.*, supra.

In the instant matter, I note that the great majority of the work performed by the employees sought by the Petitioner is of an integrated nature. For example, the installation of HVAC systems appears to routinely require different types of piping, including refrigeration hook ups for air conditioning units. However, the work of the servicemen is often performed in isolation and on smaller jobs. With the exception of the auto mechanic, whose unique status I have addressed below, most of the work of the employees whom Petitioner would exclude is not functionally integrated with the work of the employees sought by the Petitioner. In this connection, I note that while electrical and plumbing work often occur on the same job and in some instances simultaneously, the performance of the one type of work only incidentally impinges on the performance of the other. Thus, in commercial and residential construction generally these two types of work are often subcontracted to different employers who may interact only in terms of the scheduling of the work. The record indicates that the same is true of the electrical and plumbing work performed by the Employer where such work is performed largely independently.

With regard to overlapping of duties between the petitioned-for employees and the employees sought to be excluded, I find that some overlap does occur. In this regard, I again note that most of the servicemen perform at least some electrical work. Additionally, at least a few of the Employer's electricians also perform some plumbing tasks, although these are generally plumbing duties that require a lesser degree of skill and are performed under the direction of a skilled plumber. Moreover, two of the employees sought by the Petitioner, Kimble and Reedy, possess electrical licenses and occasionally perform some electrical work. Craig Baughman has also apparently performed at least some electrical work, although he is not licensed. However, none of the Employer's other plumbers possess electrical licenses and it appears that the lack of such licenses may be a factor in the minimal amount of cross training from plumber to electrician.

The record reflects that in most instances the Employer assigns plumbing and electrical work along traditional craft lines. Thus, an electrician will typically perform electrical work and a plumber will typically perform plumbing work. Additionally, most of the HVAC work is concentrated among the servicemen and four other employees who principally perform such work. The record also discloses, however, that some work is assigned according to need, such as when an electrician is assigned to act as a plumber's helper or when the Employer assigns

electricians to perform plumbing work in lieu of laying them off for lack of work. Moreover, the wages and benefits of the group that the Petitioner seeks to represent and those it would exclude are similar and do not provide a basis for distinguishing the two groups. Cross training between the included and excluded groups does occur, albeit on a limited basis as discussed. Finally, I note that labor relations is centralized in the person of Jay Marino and that the included and excluded groups are commonly supervised by Marino.

Some of the factors discussed above favor an overall unit. However, with some limited exceptions the record evidence establishes that the Employer assigns electrical work to electricians and plumbing work to plumbers. As noted above, the overlap in performance of different craft work primarily involves less skilled work. Thus, it is clear with respect to electrical work that the Employer assigns its skilled work along separate craft lines. In this connection the Board has held that, “the overlapping of duties in the lesser skilled aspects of a trade does not preclude a craft unit.” *Schaus Roofing*, supra at 781, citing *Burns & Roe*, supra at 1309. Accordingly, I find that the craft lines with regard to electrical work are not so blurred as to affect the separate nature of that craft. Thus, the group that the Petitioner seeks to exclude, with the exception of the mechanic, constitutes a separate appropriate unit. The skilled plumbing work is also assigned along separate craft lines the great majority of the time. The HVAC work, however, is assigned to servicemen and other employees who also perform plumbing work. Although some servicemen and HVAC employees may regularly perform less complex electrical work, such work appears to be incidental to their primary work. It appears from the record that such employees share a sufficient community of interest with the plumbers to warrant their inclusion in the same group with the plumbers. *Johnson Controls*, supra.

Based on the foregoing, the entire record and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the unit sought by the Petitioner constitutes a separate appropriate unit for purposes of collective bargaining. In reaching this decision, I note that a unit need only be appropriate for bargaining and that there is no requirement that it be the only or most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950). Here, the craft employees constitute an appropriate grouping of employees for purposes of collective bargaining. *Johnson Controls*, supra; *Schaus Roofing*, supra. Moreover, the electricians who are excluded from the unit would themselves constitute an appropriate “craft” unit.

I have carefully reviewed and considered the arguments of the parties at the hearing and in their briefs before reaching the above conclusion. The Employer contends in its brief that the Board’s decision in *Schaus Roofing*, supra, is distinguishable from the instant case. However, as more fully explicated above, I have concluded that *Schaus Roofing* is supportive of my decision. Thus, contrary to the Employer’s contention, I have found the degree of cross training between the included and excluded employees to be minimal. I have also found that the record establishes that the Employer assigns skilled work along craft lines the vast majority of the time. Accordingly, I concluded that these factors outweigh the evidence of common supervision and comparable wages and benefits. Finally, the record establishes that the excluded electricians may constitute a separate appropriate unit.

There remains for consideration the placement of the auto mechanic, David Bruner. Bruner does not have an electrical license and it does not appear that he is qualified to perform

electrical work. General testimony establishes that in addition to his duties as an auto mechanic that he acts as a helper on various jobs of the Employer. As a single employee who would not appear to belong in an electrical craft unit, Bruner would be faced with the prospect, unless included in the unit here, of being denied the opportunity to be represented for purposes of collective bargaining. Accordingly, as the Board seeks to avoid such results and as Bruner acts as a helper on certain construction jobs, I shall include Bruner in the unit.

### **APPLICATION OF THE DANIELS/STEINY FORMULA:**

The parties did not take a position at the hearing or in their briefs regarding the application of an eligibility formula. The Employer clearly is engaged in the construction industry as reflected by the record testimony. Accordingly, pursuant to the Board's general policy regarding employers engaged in the construction industry, I shall establish a formula for determining those employees eligible to vote in the election. *Steiny and Company, Inc.*, 308 NLRB 1323, 1327 (1992); *Daniel Construction Co.*, 133 NLRB 264 (1961). Eligible to vote are those employees covered by the formula set forth in the Direction of Election.

### **THE UNIT:**

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in their briefs, I shall direct an election among the employees in the following bargaining unit:

All full-time and regular part-time plumbers, plumbers helpers, HVAC servicemen, and the auto mechanics employed by the Employer at and out of its Charleston, West Virginia facility, excluding all electricians, office clerical employees, managerial employees and all professional employees and guards and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Also eligible to vote are all employees in the unit



who have been employed for a total of 30 working days or more within the period of 12 months preceding the eligibility date for the election, or who have had some employment in that period and who have been employed 45 working days or more within the 24 months immediately preceding the eligibility date for the election, and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed. *Steiny and Company, Inc.*, supra; *Daniel Construction Co.*, supra. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the **Plumbers and Pipefitters, Local Union 625, affiliated with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO.**

### **LIST OF ELIGIBLE VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **March 4, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **March 11, 1999**.

Dated at Cincinnati, Ohio this 25<sup>th</sup> day of February 1999.

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